

## Securities and Exchange Commission

## § 240.15g-3

(§ 249.311 of this chapter) with respect to the plan.

(b) If the procedure permitted by this Rule is followed, the financial statements required by Form 11-K with respect to the plan shall be filed within 120 days after the end of the fiscal year of the plan, either as a part of or as an amendment to the annual report of the issuer for its last fiscal year, *provided that* if the fiscal year of the plan ends within 62 days prior to the end of the fiscal year of the issuer, such information, financial statements and exhibits may be furnished as a part of the issuer's next annual report. If a plan subject to the Employee Retirement Income Security Act of 1974 uses the procedure permitted by this Rule, the financial statements required by Form 11-K shall be filed within 180 days after the plan's fiscal year end.

[27 FR 7871, Aug. 9, 1962, as amended at 55 FR 23929, June 13, 1990]

### § 240.15g-1 Exemptions for certain transactions.

The following transactions shall be exempt from 17 CFR 240.15g-2, 17 CFR 240.15g-3, 17 CFR 240.15g-4, 17 CFR 240.15g-5, and 17 CFR 240.15g-6:

(a) Transactions by a broker or dealer:

(1) Whose commissions, commission equivalents, mark-ups, and mark-downs from transactions in penny stocks during each of the immediately preceding three months and during eleven or more of the preceding twelve months, or during the immediately preceding six months, did not exceed five percent of its total commissions, commission equivalents, mark-ups, and mark-downs from transactions in securities during those months; and

(2) Who has not been a market maker in the penny stock that is the subject of the transaction in the immediately preceding twelve months.

NOTE: Prior to April 28, 1993, commissions, commission equivalents, mark-ups, and mark-downs from transactions in designated securities, as defined in 17 CFR 240.15c2-6(d)(2) as of April 15, 1992, may be considered to be commissions, commission equivalents, mark-ups, and mark-downs from transactions in penny stocks for purposes of paragraph (a)(1) of this section.

(b) Transactions in which the customer is an institutional accredited in-

vestor, as defined in 17 CFR 230.501(a)(1), (2), (3), (7), or (8).

(c) Transactions that meet the requirements of Regulation D (17 CFR 230.501-230.508), or transactions with an issuer not involving any public offering pursuant to section 4(2) of the Securities Act of 1933.

(d) Transactions in which the customer is the issuer, or a director, officer, general partner, or direct or indirect beneficial owner of more than five percent of any class of equity security of the issuer, of the penny stock that is the subject of the transaction.

(e) Transactions that are not recommended by the broker or dealer.

(f) Any other transaction or class of transactions or persons or class of persons that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts by order as consistent with the public interest and the protection of investors.

[57 FR 18032, Apr. 28, 1992]

### § 240.15g-2 Risk disclosure document relating to the penny stock market.

(a) It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g-100, and has obtained from the customer a manually signed and dated written acknowledgement of receipt of the document.

(b) The broker or dealer shall preserve, as part of its records, a copy of the written acknowledgment required by paragraph (a) of this section for the period specified in 17 CFR 240.17a-4(b) of this chapter.

[58 FR 37417, July 12, 1993]

### § 240.15g-3 Broker or dealer disclosure of quotations and other information relating to the penny stock market.

(a) *Requirement.* It shall be unlawful for a broker or dealer to effect a transaction in any penny stock with or for the account of a customer unless such broker or dealer discloses to such customer, within the time periods and in